

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**REQUEST TO FILE DOCUMENT CONCERNING CONFIDENTIAL DEFENSE
MENTAL HEALTH INVESTIGATION INFORMATION
UNDER SEAL AND *EX PARTE***

Defendant, Robert Bowers, through counsel, respectfully requests an Order permitting him to file a document setting forth confidential defense work product regarding the defense mental health investigation and expert evaluation under seal and *ex parte*. In support of this request, counsel state as follows:

1. Contemporaneous with this request, the defense is filing a Notice Regarding Rule 12.2(a) and *Atkins v. Virginia* and Motion to Reset Deadlines for Rule 12.2(b).

2. The defense anticipates that the prosecution will oppose the motion to reset deadlines, asserting, as it has repeatedly in the past, that counsel have performed incompetently, are misrepresenting the work that has been accomplished to date, or are unethically attempting to avoid providing notice. *See, e.g.*, ECF 591.

3. To provide the Court with accurate, factual information regarding the status of the mental health investigation and expert work, the defense seeks to provide the Court

– *ex parte* – with specifics regarding the state of its mental health investigation and expert work.

4. As the *ex parte* pleading will show, counsel have worked diligently and made productive use of time since being appointed to represent Mr. Bowers. Defense counsel substantially intensified these efforts after the Attorney General rejected the opportunity to resolve the case immediately with a guilty plea to all charges and a sentence of life in prison without the possibility of release, instead insisting on the pursuit of Mr. Bowers’ execution.

5. The document the defense seeks to file must be provided *ex parte* and under seal because the government is not entitled to defense confidential work product or attorney-client protected information.

6. The defense further requests permission to file the document under seal without also filing a redacted version.

Respectfully submitted,

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Clarke Johnston Thorp & Rice, PC

/s/ Michael Burt
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/s/ Michael J. Novara
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